

Hamilton

AGENDA 13-004

Accountability and Transparency Sub-Committee

Monday, September 30, 2013

1:30 p.m.

Room 192

Hamilton City Hall

71 Main Street West

- 1. CHANGES TO THE AGENDA**
- 2. DECLARATIONS OF INTEREST**
- 3. APPROVAL OF MINUTES**
 - 3.1 June 6, 2013
- 4. DELEGATION REQUESTS/PUBLIC HEARINGS/DELEGATIONS**
- 5. PRESENTATIONS**
- 6. DISCUSSION**
 - 6.1 Lobbyist Registry (FCS13029(b)/LS13006(b)) (City Wide)
- 7. NEW BUSINESS**
- 8. ADJOURNMENT**



Hamilton

MINUTES 13-003

Accountability and Transparency Sub-Committee

Thursday, June 6, 2013

2:00 p.m.

Room 264

Hamilton City Hall

71 Main Street West

Present: Councillors L. Ferguson (Chair), J. Partridge (Vice-Chair),
and T. Whitehead
Mayor Bratina
Citizen Members D. Arbuckle and D. Broom

Absent with Regrets: Citizen Member L. Ryan
Citizen Member J. Chapman

FOR THE INFORMATION OF COMMITTEE:

(a) CHANGES TO THE AGENDA (Item 1)

(Broom/Arbuckle)

That the Agenda for the June 6, 2013 meeting of the Accountability and Transparency Sub-Committee, be approved.

CARRIED

(b) DECLARATIONS OF INTEREST (Item 2)

None.

(c) APPROVAL OF MINUTES (Item 3)

(i) March 5, 2013

(Arbuckle/Broom)

That the Minutes of the March 5, 2013 Accountability and Transparency Sub-Committee, be approved.

CARRIED

(d) DISCUSSION (Item 6)

(i) Lobbyist Registry (FCS13029(a)/LS13006(a)) (City Wide) (Item 6.1)

Lisa Pasternak, Solicitor, provided an overview of the report with the aid of a PowerPoint Presentation. A copy of the presentation has been included in the public record.

Lisa Barroso, Manager, Records & Freedom of Information, demonstrated the City of Ottawa's lobbyist registry website.

Questions included, but were not limited to: the handling of confidential communications; the approval process for information on the website; transparency of lobbying; staff resources (FTEs); software costs; current tools in place; lobbying that only includes face-to-face meetings; preferences for a simplified model; a phase in process for the inclusion of senior staff as part of the lobbyist registry; a full time versus a part time lobbyist registrar; voluntary registry; the possible use of surcharge fees to offset costs of the registry; constituents and non-profit organizations; in-house technology solutions for the registry;

(Arbuckle/Partridge)

- (a) That any IT solutions related to the establishment of a lobbyist registry use an existing tool within the City, that satisfies the goals and objectives of increasing transparency and accountability in regards to lobbying.

CARRIED

(Whitehead/Partridge)

- (b) That staff be directed to prepare a draft by-law to be approved at the next meeting of the Accountability and Transparency Sub-Committee in September 2013;

- (c) That the proposed timeline be updated to include a meeting with a draft by-law for September 2013 and to update the remaining time lines accordingly.

CARRIED

(e) ADJOURNMENT (Item 8)

Due to loss of quorum the Accountability and Transparency Sub-Committee adjourned at 3:50 p.m.

CARRIED

Respectfully submitted,



Councillor L. Ferguson
Chair, Accountability and
Transparency Sub-Committee

Vanessa Robicheau
Legislative Coordinator
Office of the City Clerk



Hamilton

INFORMATION REPORT

TO: Chair and Members Accountability and Transparency Sub-Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: September 30, 2013	
SUBJECT/REPORT NO: Lobbyist Registry (FCS13029(b)/LS13006(b) (City Wide)	
SUBMITTED BY: Mike Zegarac Acting General Manager Finance & Corporate Services Janice Atwood-Petkovski City Solicitor City Manager's Office	PREPARED BY: Lisa Pasternak, Solicitor (905) 546-2424 ext. 7292 Rose Caterini, City Clerk (905) 546-2424 ext. 5409
SIGNATURE:  	

Council Direction:

N/A.

Information:

At its June 6, 2013, meeting, the Accountability and Transparency Sub-Committee indicated its preference for a simplified Lobbyist registry model, which would include limited one-time and ongoing financial/staffing requirements and a streamlined by-law. The Sub-Committee also requested a new draft timeline for the Committee/Council approval process which is to include public delegation on a recommended by-law.

OUR Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

OUR Mission: WE provide quality public service that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Values: Accountability, Cost Consciousness, Equity, Excellence, Honesty, Innovation, Leadership, Respect and Teamwork.

Background:

Since 2007, Ontario municipalities have had the ability to appoint one or more accountability officers:

- Integrity Commissioner;
- Auditor General;
- Lobbyist Registrar; and
- Ombudsman (separate and apart from the Provincial Ombudsman).

All 4 accountability and transparency officers are mandatory for Toronto; for all other municipalities these are all optional.

Out of these 443 municipalities:

- 30 (including Hamilton) have an Integrity Commissioner;
- 6 (including Hamilton) have an Auditor General;
- 1 (Ottawa) has a Lobbyist Registrar; and
- No municipality has an Ombudsman.

Key Concepts to Consider in Establishing a Lobbyist Registry

There are some key concepts which should be understood when establishing a Lobbyist Registry:

- Lobbying is not inherently wrong and a Lobbyist Registry is about providing better transparency;
- The lobbyist is responsible for self-identifying;
- Lobbying means communicating about a subject matter to advance an interest;
- Lobbyists can be independent or in-house, paid or unpaid;
- The Lobbyist Registry is public;
- Anyone can file a complaint with the Lobbyist Registrar;
- The Lobbyist Registrar investigates and may impose sanctions against lobbyists;
- A lobbyist who fails to register may be prohibited from lobbying.

Draft Timeline:

Date	Committee/Council	Decision Point
September, 2013	A&T Sub-Committee	<ul style="list-style-type: none">• Consider draft by-law• Make recommendations to GIC
October, 2013	GIC	<ul style="list-style-type: none">• Consider A&T Sub-Committee recommendations on a model and a draft by-law• Refer recommendations to GIC Budget deliberations
November 2013 /April 2014	GIC Budget process	<ul style="list-style-type: none">▪ consideration of funding
April/May, 2014	GIC	<ul style="list-style-type: none">▪ Invite interested Stakeholders and the public to provide comments▪ Hear Delegations
June, 2014	Council	<ul style="list-style-type: none">▪ By-law enacted to come into force January 26th, 2015
June – Dec 2014		<ul style="list-style-type: none">▪ Recruitment of Registrar and additional staff▪ IT staff to build web application▪ Prepare training material▪ Train staff▪ Train Council members
January 2015		<ul style="list-style-type: none">▪ By-law comes into force

Financial/Staffing Implications:

The estimated total cost associated with developing the Registry is approximately \$50,000-\$100,000. The cost of implementing and maintaining the Lobbyist Registry is approximately \$114,000-\$127,000 annually. Approximately \$92,000 of the annual cost represents employer-related costs associated with the requirement for one new FTE required to support the Lobbyist Registry. Staff conducted a review of the imposition of

a registration fee for lobbyists, to off-set the cost of the Registry. In addition to the fact that a fee may have a disincentive effect on registrations, there are legislative restrictions which prevent the inclusion of these costs, in other fees, such as those authorized under the Building Code and Planning Acts.

Breakdown of the estimated costs are as follows:

One-Time:

\$50,000-100,000

One-time development cost of web-based registry utilizing existing resources to develop an in-house solution based on existing I.T. tools: estimated 680-1,360 hours of I.T. support with associated cost of \$90,000 plus cost of supporting software estimated at \$10,000.

The Registry development work should be undertaken in conjunction with the Web Re-development Project.

Annual:

\$92,000 Administrative Staff (cost represents salary plus benefits for 1 FTE Policy Analyst) required to undertake work including creating and conducting training for affected staff and public office holders, assisting lobbyists and responding to inquiries regarding filing requirements under the registry.

Given the resource constraints which will be experienced in the Clerks Division during 2014, as the election administration is underway, this additional administrative resource is essential.

\$22,000-35,000

Lobbyist Registrar: represents costs associated with functions of Lobbyist Registrar, whether separate or combined with Integrity Commissioner, based on an estimated 100 hours annually (for the purposes of this report). The actual cost will vary depending on the ultimate by-law enacted, the education and training provided prior to implementation and the number of complaints received.

In Toronto, the only Ontario municipality which has had a Lobbyist Registry, for several years, the office of the Lobbyist Registrar has 7 FTEs, an operating budget of \$1.08M and a proposed capital budget of \$2.3M for 2014-2020.

The City's Integrity Commissioner, Mr. Earl Basse, was asked about combining the role of a Lobbyist Registrar with the Integrity Commissioner. He responded that, after due consideration, it is his opinion that the Lobbyist Registrar and Integrity Commissioner are sufficiently compatible with each other to allow for economies of scale and it would appear that the model currently followed in Ottawa would work for Hamilton.

Draft By-law:

Highlights:

The draft by-law generally provides as follows:

- Lobbying means communicating with a public office holder with the goal of advancing a business or financial interest, and generally includes:
 - development and approval of by-laws, policies, programs;
 - purchasing goods and services;
 - approving applications regarding planning, permits, grants, licenses;
 - awarding contracts, financial contributions, benefits; and
 - arranging a meeting to deal with lobbying.
- The Lobbyist Registrar is an independent officer appointed by Council responsible for investigating complaints, imposing sanctions, as appropriate, and otherwise enforcing the by-law;
- Public office holders must cooperate with the Lobbyist Registrar during an investigation, providing information as requested;
- Lobbyists are required to self-identify and register within 15 days after any lobbying activity takes place;
- Lobbyists may be sanctioned for failure to follow the by-law, i.e. a ban on future lobbying activity;
- The Lobbyist Registrar will notify public office holders of any lobbyist who has been banned from lobbying; and
- The by-law comes into force January 26th, 2015, allowing appropriate time for training of public office holders following the 2014 municipal general elections.

Exemptions:

In preparing the draft by-law, staff reviewed Lobbyist Registry systems in Toronto, Ottawa and at the Province of Ontario. Standard exemptions include:

- Lobbying does not include matters of public record, delegations, and requests for information or in the normal course of an approval process or processing an application, bid submissions, or participating in consultations; and
- Individuals who are not lobbyists include persons acting on behalf of government or the public sector or other statutory bodies, or on behalf of First Nations.

Decision Points:

Two decision points remain, as highlighted in the boxes, in the draft by-law:

- the definition “public office holder” - Box #2 – namely including employees who are members of the City’s Senior Management Team in addition to Council and its staff; and
- the addition of exemptions to lobbying – Boxes #1 and #3 - namely:
 - a communication with public office holders on matters of broad community interest (policy, program, etc.) where the business, individual or other entity has no direct or indirect financial interest;
 - a non-profit communicating with a public office holder where the non-profit has no paid staff;
 - a constituent communicating with a public office holder with respect only to a personal or business matter on their own behalf.

Appendices:

Appendix “A” – Draft Lobbyist Registry By-law

DRAFT BY-LAW

CITY OF HAMILTON
BY-LAW NO. XX-XXX

To Establish and Maintain a Lobbyist Registry

WHEREAS Council desires to establish and maintain a Lobbyist Registry and appoint a Lobbyist Registrar to provide transparency about persons who lobby the City of Hamilton's public office holders;

AND WHEREAS section 223.9 of the *Municipal Act, 2001* authorizes the City of Hamilton to establish and maintain a Lobbyist Registry in which shall be kept returns filed by persons who lobby the City of Hamilton's public office holders;

AND WHEREAS section 223.11 of the *Municipal Act, 2001* authorizes the City of Hamilton to appoint a Lobbyist Registrar who is responsible for performing in an independent manner the functions assigned by the City of Hamilton with respect to the Lobbyist Registry;

AND WHEREAS sections 8, 9 and 10 of the *Municipal Act, 2001* authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes, and in particular paragraph 2 of subsection 10(2) authorizes by-laws respecting the accountability and transparency of the municipality and its operations;

AND WHEREAS sections 23.1 and 23.2 of the *Municipal Act, 2001* authorize the City of Hamilton to delegate its powers and duties, including legislative and quasi-judicial powers under the *Municipal Act, 2001*, to an individual who is an officer, employee or agent of the City of Hamilton;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

Definitions

1. In this By-law:

"business day" means any day on which the City's administrative buildings are open for business;

"City" means the municipality of the City of Hamilton or the geographic area of the City of Hamilton, as the context requires;

"communication" means any type of expressive contact and includes but is not limited to oral, written or electronic communication and "communicate" has a similar meaning;

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"constituent" means:

(a) with respect to the Mayor:

- (i) an individual who resides in the City; or
- (ii) an owner or operator of a business or other entity located in the City; and

(b) With respect to a Councillor:

- (i) an individual who resides in the Councillor's ward; or
- (ii) an owner or operator of a business or other entity located in the ward;

"lobby", used as a verb, means to communicate with a public officer holder on any of the following subject matters with the goal of advancing a business or financial interest:

- (a) the development, introduction, passage, defeat, amendment or repeal of a City by-law, bill or resolution on any matter;
- (b) the development, approval, amendment or termination of a City policy, program, directive, guideline, including but not limited to a service delivery model;
- (c) the purchase of goods, services or construction and the award of a contract by the City;
- (d) the approval, approval with conditions, or refusal of an application for a service, grant, planning approval, permit or other licence or permission by the City;
- (e) the award of any financial contribution, grant or other financial benefit by the City;
- (f) the transfer to or from the City of any interest in or asset of any business, enterprise or institution;
- (g) to arrange a meeting between a public office holder and any other person on any of the subject matters listed in subsections (a) to (f) inclusive.

"lobbyist" means a consultant lobbyist, in-house lobbyist or voluntary unpaid lobbyist and:

- (a) **"consultant lobbyist"** means an individual who lobbies for payment on behalf of a client (another individual, a business or other entity);
- (b) **"in-house lobbyist"** means an individual who is an employee, partner or sole proprietor and who lobbies on behalf of his or her own employer, business or other entity; and
- (c) **"voluntary unpaid lobbyist"** means an individual who lobbies without payment on behalf of an individual, business or other entity for the benefit of the interests of the individual, business or other entity;

"Lobbyist Registrar" means the individual appointed by Council from time in accordance with section 223.11 of the *Municipal Act, 2001*;

"public office holder" means

#2

- a member of Council and any person on his or her staff
- an employee of the City who is a member of the City's Senior Management Team

"registration" means a registration completed by a lobbyist when filing a first return that identifies him or her as set out in paragraph 6(1)(a); and

"return" means a return filed by a lobbyist regarding a lobbying communication that describes the lobbying communication as set out in subsection 6(1).

Responsibilities of the Lobbyist Registrar

2. The Lobbyist Registrar's responsibilities include:

- (a) overseeing the establishment and maintenance of a lobbyist registry, including determining the lobbyist registry's form and content, in which shall be kept the registrations completed and returns filed by lobbyists under section 6;
- (b) making the lobbyist registry available for public inspection through electronic, web-based access at all reasonable times;
- (c) providing advice, opinions and interpretation pertaining to the administration, application and enforcement of this By-law;
- (d) conducting inquiries in respect of a request made by Council, a member of Council or a member of the public about compliance with this By-law, which may include requesting that a public office holder gather information concerning lobbying of him or her and provide that information to Lobbyist Registrar;
- (e) suspending, revoking or refusing a registration or return;
- (f) enforcing this By-law;
- (g) advising Council on lobbying matters and recommend improvements to this By-law;
- (h) providing an annual report to Council and any other reports as the Lobbyist Registrar considers appropriate; and
- (i) performing other duties as may be assigned by Council from time to time.

Responsibilities of a Public Office Holder

3.(1) A public officer holder's responsibilities include:

- (a) responding, in a timely and complete manner, to a request from the Lobbyist Registrar under subsection 2(d) to gather and provide information; and
 - (b) ending, as soon as practicable, lobbying by a lobbyist who is prohibited from lobbying and reporting, in a timely manner, such lobbying to the Lobbyist Registrar.
- (2) Except when responding to a request from the Lobbyist Registrar under subsection 2(d), a public officer holder's responsibilities under this By-law do not include gathering or providing information concerning lobbying of him or her.

Lobbying Exemptions

4. Lobbying does not include:

- (a) communication that is a matter of the public record or occurs during a meeting of Council or a Committee of Council;
- (b) communication that occurs during a public process such as a public meeting, hearing, consultation, open house or media event held or sponsored by the City or a public office holder or related to an application;
- (c) communication that is restricted to a request for information;
- (d) communication that is restricted to compliments or complaints about a service or program;
- (e) communication with a public office holder by an individual on behalf of an individual, business or other entity about:
 - (i) the enforcement, interpretation or application of any Act or by-law by the public office holder and with respect to the individual, business or other entity;
 - (ii) the implementation or administration of any policy, program, directive or guideline by the public office holder and with respect to the individual, business or other entity;
 - (iii) a personal matter of the individual, business or other entity unless it is communication that is in respect of a matter that falls under the definition of lobbying, that is for the special benefit of the individual, business or other entity;
- (f) communication by an applicant, an interested party or their representatives with respect to an application for a service, grant, planning approval, permit or other license or permission:
 - (i) with a public office holder if the communication is restricted to providing general information on an application, including a proposed or pending application, or to inquire about the application review process;
 - (ii) with an employee of the City if the communication is part of the normal course of the approval process;
 - (iii) with an employee of the City if the communication is with respect to planning or development applications and the officer or employee has a role in the processing of a planning or development application during the formal pre-application consultation, the filing of the application and the application review process, including the preparation of development agreements;
- (g) submitting a bid proposal as part of the procurement process and any communication with designated employees of the City as permitted in the procurement policies and procurement documents of the City;
- (h) communication with a public office holder by an individual on behalf of an individual, business or other entity in direct response to a written request from the public office holder;

- (i) communication directly related to those City-initiated consultative meetings and processes where an individual is participating as a stakeholder;

#3

- communication for or against a policy or program that state a position where the primary focus is a broad community benefit or detriment, whether City-wide or local, and where that position would have no direct, indirect or perceived benefit to a business or financial of the individual, business or other entity on whose behalf the communication is undertaken
- communication regarding a business or financial interest by not-for-profit businesses or other not-for-profit entity where such business or entity has no paid staff; or
- communication with a public officer holder by their constituent regarding that constituent's business or financial interest.

Lobbyist Exemptions

5. Lobbyist does not include the following individuals when acting in their public capacity:

government or public sector not including the City and other municipal bodies

- (a) members of the Senate or House of Commons of Canada, the legislative assembly of a province, the council or legislative assembly of a territory, or persons on the staff of the members;
- (b) members of a First Nation council as defined in the Indian Act or of the council of an Indian band established by an Act of the Parliament of Canada, or persons on the staff of the members;
- (c) employees or consultants retained by the Government of Canada, the government of a province or territory, a First Nation council, a federal or provincial crown corporation or other federal or provincial public agency;
- (d) members of a council or other statutory body, including a local board, charged with the administration of the civil or municipal affairs of a municipality in Canada other than the City, persons on staff of the members, or officers or employees of the municipality or local board;
- (e) members of a national or sub-national foreign government, persons on the staff of the members, or officers, employees, diplomatic agents, consular officers or official representatives in Canada of the government;

the City and other municipal bodies

- (f) public office holders;
- (g) members or employees of a local board of the City; or
- (h) members of an advisory committee appointed by Council.

Registrations and Returns

- 6.(1) A lobbyist shall file a return regarding each lobbying communication within 15 business days of the communication occurring and:
- (a) when filing a first return, a lobbyist shall complete a registration that includes:
 - (i) his or her name, address and contact information; and
 - (ii) such further information as the Lobbyist Registrar may require; and
 - (b) when filing any return, the lobbyist's return shall include:
 - (i) if he or she is a consultant lobbyist, in-house lobbyist or voluntary unpaid lobbyist;
 - (ii) the name of the individual, client or other entity on whose behalf he or she is lobbying;
 - (iii) the name of the individual he or she is lobbying;
 - (iii) the subject matter and date of the lobbying communication; and
 - (iv) such further information as the Lobbyist Registrar may require.
- (2) A lobbyist shall update any change to his or her registration immediately.

Enforcement

- 7.(1) The Lobbyist Registrar may prohibit an individual from lobbying, as follows, if the Lobbyist Registrar finds that the individual has contravened any of the provisions of this By-law:
- (a) for 30 days for a first contravention;
 - (b) for 60 days for a second contravention;
 - (c) for a period of time longer than 60 days as determined by the Lobbyist Registrar for a third or subsequent contravention.
- (2) When the Lobbyist Registrar prohibits an individual from lobbying, the Lobbyist Registrar shall:
- (a) notify the individual and all public office holders of the prohibition and the reason for the prohibition in such manner as the Lobbyist Registrar determines; and
 - (b) post the prohibition and the reason for the prohibition on the City's website.
- 8.(1) The Lobbyist Registrar may remove a registration or return from the lobbyist registry if the Lobbyist Registrar finds that the individual who completed the registration or filed the return has contravened this By-law.
- (2) When a registration or return is removed from the lobbyist registry, the individual who completed the registration or filed the return is deemed, for the purposes of his or her existing and future obligations under this By-law, not to have completed the registration or filed the return.

9. In accordance with subsection 223.12(7) of the *Municipal Act, 2001*, should the Lobbyist Registrar determine, when conducting an inquiry, that there are reasonable grounds to believe that an individual has contravened a provincial Act of the Criminal Code of Canada, the Lobbyist Registrar shall immediately refer the matter to appropriate authorities and suspend the inquiry pending the outcome of any resulting police investigation.

Short Title

10. This By-law may be referred to as the "Lobbyist Registry By-law".

Enactment

11. This By-law comes into force on January 26, 2015.